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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,262	11/28/2001	Edward Anthony Bezek	CFLAY.00075	9131
22858	7590	05/25/2004	EXAMINER	
CARSTENS YEE & CAHOON, LLP			BECKER, DREW E	
P O BOX 802334			ART UNIT	PAPER NUMBER
DALLAS, TX 75380			1761	

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/000,262

Applicant(s)

BEZEK ET AL.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Request for Continued Examination

1. The request filed on March 31, 2004 for an RCE based on parent Application No. 10/000,262 is acceptable and an RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 29 recites "fits both large and small hands comfortably". It is not clear what size hand would be considered "large" and "small".

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

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351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 27-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller [Pat. No. 6,474,494].

Miller teaches a portable container comprising a cylindrical receptacle for holding a first food product in the form of a beverage (Figure 1, #18), a removable cap over a first end of the receptacle which acts as a bowl (Figure 1, #14), a removable seal (Figure 1, #12), the cap containing promotional products such as chips and dip (column 4, line 44), the receptacle containing a beverage (column 4, line 18), the receptacle having a hand grip (Figure 1), and a collar (Figure 1, #14BB). The recitation "for holding a solid food product..." has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

7. Claims 27-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al [Pat. No. 6,068,865].

Lee et al teach a portable container comprising a cylindrical receptacle for holding a first food product (Figure 1, #30), a removable cap over a first end of the receptacle which was capable of acting as a bowl when inverted (Figure 1, #20), a removable seal (Figure 1, #32), the cap containing promotional products such as chocolate (Figure 2,

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#24), the receptacle containing yoghurt (Figure 2, #34), the receptacle having a shape that provided a hand grip (Figure 1, #30), the cap having a collar or rim (Figure 1, #20), and the cap being transparent (column 6, line 30). The recitation "for holding a solid food product..." has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

8. Claims 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Le Rose [Pat. No. 2,076,132].

Le Rose teaches a portable container comprising a generally cylindrical receptacle for holding a first food product in the form of a beverage (Figure 1, #7), a removable cap over a first end of the receptacle which was capable of acting as a bowl when inverted (Figure 1, #15), a removable seal (Figure 2, #13), the cap containing promotional products such as ice cream (column 2, line 16), the receptacle containing soda (column 1, line 7), the receptacle having a shape that provided a hand grip (Figure 1, #9), the cap having a collar (Figure 1, #19), and the cap having a lip which engaged a groove in the receptacle (column 2, line 25). The recitation "for holding a solid food product..." has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the

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purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

9. Claims 27-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Nava et al [Pat. No. 6,070,752].

Nava et al teach a portable container comprising a generally cylindrical receptacle for holding a first food product in the form of a beverage (Figure 1, #8), a removable cap over a first end of the receptacle which was capable of acting as a bowl when inverted (Figure 1, #10), the cap containing promotional products such as CD's (Figure 2, #16), the receptacle containing soda (Figure 1, #9), the receptacle having a shape that provided a hand grip (Figure 1, #8), and the cap having a collar or rim (Figure 1, #23).

The recitation "for holding a solid food product..." has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

10. Claims 1-2, 4, 8-12, 14-16, 20-24, and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Atkinson [Pat. No. 5,705,212].

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Atkinson teaches a container comprising a food product (Figure 1, #16), a collectible spoon (Figure 1, #22), a cylindrical receptacle including a handgrip region (Figure 1, #12), a removable cap capable of acting as a cup or bowl (Figure 1, #14), a removable seal (Figure 1, #21), a lip and groove providing a snap-fit (Figure 1, #20), and a collar (Figure 1, #14b).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 5-7 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson as applied above, in view of Kirshenbaum et al [Pat. No. 4,051,265].

Atkinson teaches the above mentioned components. Atkinson does not teach an outer layer which carries graphics and provides an oxygen barrier. Kirshenbaum et al teach a container and cap with an outer layer which provided an oxygen barrier (Figure 1, #14; abstract), as well as the use of graphics (column 5, lines 50-62). It would have been obvious to one of ordinary skill in the art to incorporate the outer layer of Kirshenbaum et al into the invention of Atkinson since both are directed to food containers, since Atkinson already included a sealed container (Figure 1, #12 & 21), and since the outer layer of Kirshenbaum et al provided an effective oxygen barrier and thus better preserved the food (abstract). It would have been obvious to one of ordinary skill in the

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art to include graphics on the outer layer of Kirshenbaum et al since Kirshenbaum et al already included graphics on the container itself (column 5, lines 50-62), since outer layers commonly included graphics, and since graphics on the outer layer would have made the product more distinctive looking and set it apart from its competitors.

13. Claims 13 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson as applied above, in view of Lee et al.

Atkinson teaches the above mentioned components. Atkinson does not recite a transparent region. Lee et al teach a container comprising a transparent region (column 6, line 30). It would have been obvious to one of ordinary skill in the art to incorporate the transparent region of Lee et al into the invention of Atkinson since both are directed to food containers, since Atkinson already included cap with an interior chamber for the spoon (Figure 1, #14), and since the transparent cap of Lee et al would have better displayed the novel spoon of Atkinson, and thus increased consumer appeal.

14. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson as applied above, in view of Howes [Pat. No. 5,076,433].

Atkinson teaches the above mentioned components. Atkinson does not recite a promotional item attached to a second end of the receptacle. Howes teaches a container comprising a promotional item attached to a second end of the receptacle (Figure 1, #21). It would have been obvious to one of ordinary skill in the art to incorporate the bottom attached promotional item of Howes into the invention of Atkinson since both are directed to beverage containers, since Atkinson already included an additional product attached to the first end (Figure 1, #22), since consumers

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greatly valued promotional items such as prizes, and since the bottom promotional item of Howes has the advantage of providing a prize, while being completely indistinguishable from a non-prize bearing container (column 2, lines 39-48).

15. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson as applied above, in view of McDevitt et al [Pat. No. 5,204,130].

Atkinson teaches the above mentioned components. Atkinson does not recite polypropylene. McDevitt et al teach a snap-fit food container made from polypropylene (column 2, line 26). It would have been obvious to one of ordinary skill in the art to incorporate the polypropylene of McDevitt et al into the invention of Atkinson since both are directed to food containers, since Atkinson already teach the use of plastics (column 2, lines 33-40), and since polypropylene was commonly used in food containers as shown by McDevitt et al (column 2, line 26).

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shorin [Pat. No. 6,162,476], Toth et al [Pat. No. 6,706,297], Smith [Pat. No. 6,622,614], Innis [Pat. No. 6,675,960], and Gordon et al [Pat. No. 6,533,114] teach food containers with extra compartments and items.

Response to Arguments


17. Applicant's arguments with respect to claims 1-2 and 4-31 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
Art Unit 1761

5-21-04